

**Updated Informative Digest for
Adoption of Proposed Amendments to
California Code of Regulations,
Title 18, Sections:**

1807, Petitions for Reallocation of Local Tax, and

1828, Petitions for Distribution or Redistribution of Transactions and Use Tax

Current Law

As explained in the Informative Digest/Policy Statement included in the notice of proposed regulatory action published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code (RTC) § 7200 et seq.), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h)). Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the State Board of Equalization (Board) to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions) for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and California Code of Regulations, title 18, section (Regulation) 1807, *Petitions for Reallocation of Local Tax*, prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.). The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the

district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Original Proposed Amendments to Regulations 1807 and 1828

As explained in the Informative Digest/Policy Statement included in the notice of proposed regulatory action published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z), Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation

recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written object to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that

the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

Public Comments

On November 4, 2011, Ms. Sturdivant submitted written comments on behalf of the HdL Companies, which recommended that the Board revise the proposed amendments to Regulations 1807 and 1828 to clarify that that Board's Sales and Use Tax Department, as a whole, rather than the Sales and Use Tax Department's Allocation Group, is responsible for:

- Reviewing petitions filed pursuant to both regulations;
- Issuing decisions to grant or deny petitions under subdivision (b)(2) of both regulations;
- Reviewing objections to its decisions issued under subdivision (b)(2) of both regulations;
- Issuing supplemental decisions in response to such objections under subdivision (b)(7) of both regulations; and
- Deciding whether to grant or deny requests for extensions under subdivision (b)(10) (as proposed to be renumbered) of both regulations.

On November 14, 2011, Mr. Albin Koch submitted written comments, which disputed the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and recommend that the proposed amendments to both regulations provide that "on any intervening proceedings under the version of regulation 1807 that became effective September 10, 2008, including, but limited to, any in which Board Member hearings were granted or petitioners exhausted their administrative remedies."

November 15, 2011, Public Hearing

The Board conducted a public hearing regarding the proposed amendments to Regulations 1807 and 1828 on November 15, 2011. Ms. Sturdivant appeared at the public hearing and made comments in support of the changes to the original text of the proposed amendments to Regulations 1807 and 1828 that she recommended in her November 4, 2011, written comments. Mr. Klehs also appeared at the public hearing and expressed support for the Board's proposed amendments to Regulation 1807 and 1828 on behalf of the City of Livermore. No other interested parties asked to speak regarding the proposed amendments.

At the conclusion of the public hearing, the Board Members unanimously voted to authorize staff to make the sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828 that are necessary to clarify the regulations in the manner recommended by Ms. Sturdivant and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c).

The Board did not agree with Mr. Koch's written comment disputing the conclusion that the Board repealed Regulations 1807 and 1828 in their entirety and adopt entirely new versions of Regulations 1807 and 1828, with new names, in 2008, and the Board did not agree to make the additional amendments recommended by Mr. Koch because the Board did not understand how the additional amendments clarified the regulations.

Regulations 1807 and 1828 were originally adopted in 2002. During 2008, the Board proposed and adopted amendments to both regulations; however, the illustrations of the proposed amendments to the text of both regulations showed the strikeout of the entire text of the 2002 versions of Regulations 1807 and 1828, including the titles, and the adoption of completely new underlined text for new regulations with new titles that were also numbered as Regulations 1807 and 1828. The Office of Administrative Law reviewed the substantive effect of the Board's 2008 rulemaking action and added the following history note to the official text of Regulations 1807 and 1828, as published in the California Code of Regulations: "Repealer and new section filed 8-11-2008; operative 9-10-2008 (Register 2008, No. 33)." The proposed amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), are consistent with the history note.

Revised Text of Proposed Amendments

In order to clarify the regulations in the manner recommended by Ms. Sturdivant, the Board made the following sufficiently related changes to the original text of the proposed amendments to Regulations 1807 and 1828:

- Replaced the reference to the "Allocation Group" in the title to subdivision (b) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced all of the references to the "Allocation Group" with references to the "Sales and Use Tax Department" in subdivision (b)(2), (3), (7), (8) (as proposed to be added), and (9) (as proposed to be renumbered) of both regulations;
- Replaced the first reference to the "Allocation Group" in subdivision (b)(4) and (5) of both regulations with a reference to the "Sales and Use Tax Department";
- Replaced the first and third references to the "Allocation Group" with references to the "Sales and Use Tax Department" and replaced the reference to the "Allocation Group's" decision with a reference to the "Sales and Use Tax Department's" decision in subdivision (b)(6) of both regulations;
- Replaced the first, third, fourth, and fifth references to the "Allocation Group" in subdivision (b)(10) (as proposed to be renumbered) of both regulations with references to the "Sales and Use Tax Department" and replaced the word "its" with "the Sales and

Use Tax Department's" in the second sentence in subdivision (b)(10) (as proposed to be renumbered) of both regulations;

- Replaced the references to the "Allocation Group" and the "Allocation Group's" with references to the "Sales and Use Tax Department" and "Sales and Use Tax Department's," respectively, in subdivision (c)(1) of both regulations;
- Replaced the word "its" with "the Sales and Use Tax Department's" in the first sentence of subdivision (c)(2) of both regulations; and
- Deleted "of the Allocation Group" from subdivision (c)(2)(A) of both regulations.

In addition, the Board also made nonsubstantial changes to the original text of the proposed amendments to Regulations 1807 and 1828 by adding "Sales and Use Tax" before the word "Department" throughout subdivision (c)(2)(B)-(D) and (7) of both regulations to ensure that both of the regulations consistently refer to the Board's Sales and Use Tax Department by its full name. Then, on November 28, 2011, the Board made the revised text of the proposed amendments, with the changes clearly indicated, available to the public for an additional 15-day comment period.

December 15, 2011, Board Meeting

On December 15, 2011, the Board determined that the proposed amendments, with the changes described above, improved the review processes prescribed by Regulations 1807 and 1828 and that the amendments were reasonably necessary for the specific purpose of improving the Board's administration of local sales and use taxes and district transactions and use taxes. Therefore, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulations 1807 and 1828, with the changes described above. No interested parties submitted written comments regarding the changes to the original text of the proposed amendments to Regulations 1807 and 1828 and no interested parties appeared on December 15, 2011, to comment on the changes to the original text of the proposed amendments to Regulations 1807 and 1828.

There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Regulations 1807 and 1828 set forth in the 15-day letter notifying the public and interested parties regarding the sufficiently related changes, which updated the Informative Digest/Policy Statement included in the notice of proposed regulatory action for the original proposed amendments to Regulations 1807 and 1828 published in the California Notice Register on September 23, 2011 (Cal. Reg. Notice Register 2011, No. 38-Z) by describing the sufficiently related and nonsubstantial changes to the proposed amendments to both regulations. The objective of the proposed amendments is still to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.